

1868.
REG.
v.
SAKYA' KA'VI
et al.

portion of the sentence passed on him in case No. 57 of the General Calendar for 1867, which sentence is hereby commuted; and that accused No. 2, Dhondi, son of Rámji, be transported for fourteen years, to begin from this day, and to include the unexpired portions of the sentences passed on him in cases No. 47 and 57 of the General Calendar for 1867, which sentences are hereby commuted."

PER CURIAM (NEWTON, Acting C.J.; and TUCKER, J.) :—Sec. 75 of the Indian Penal Code has been improperly applied to the case of Dhondi, and a longer term of transportation awarded than can be given under Sec. 392 of the Indian Penal Code; inasmuch as the offence for which sentence of transportation was passed was not committed subsequently to any conviction. The Court, therefore, annuls the sentence, and directs that a legal sentence be passed.

In the case of Sakyá, Sec. 75 of the Indian Penal Code has been improperly and unnecessarily applied, as the sentence of transportation was a legal one under Sec. 392 of the Indian Penal Code; and the Court, therefore, does not interfere.



April 2.

REG. V. GANU bin TA'TIA' SELAR.

Complaint—Sanction—Crim. Proc. Code, Sec. 168.

Prosecution for non-attendance in obedience to a summons was entertained without the sanction or complaint required by Sec. 168 of the Criminal Procedure Code :—*Held* that there was an implied sanction for the prosecution, as the conviction was by the same Magistrate whose summons was treated with contempt.

THE accused was convicted by the Second Class Subordinate Magistrate of Karanjá, in the Thana District, under Sec. 174 of the Indian Penal Code, of "non-attendance in obedience to a summons from a public servant," and sentenced to pay a fine of eight annas, or in default to suffer simple imprisonment for one day.

The case was referred for the orders of the Court, under Sec. 434 of the Code of Criminal Procedure, by J. W.

Robertson, Acting Magistrate of the District, who remarked that the prosecution in the case was entertained without the sanction or complaint required by Sec. 168 of the Code of Criminal Procedure.

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PER CURIAM (NEWTON, Acting C. J., and TUCKER, J.) :—
Although the proceedings would have been more regular if express sanction had been given for the prosecution, still as the charge was tried before the same Magistrate whose summons was treated with contempt, his sanction for the prosecution must be implied, and under such circumstances no complaint was necessary.

No order.

REG. V. NARA'INA'PPA' COMTE.

May 20.

Summons—Non-attendance in obedience to summons—Revenue case—Reg. XVII. of 1827, Secs. 26 and 29.

Held that a conviction under Sec. 174 of the Indian Penal Code for “having intentionally omitted to attend the Mahalkari’s *Katcheri* to give evidence in a revenue case, under Secs. 26 and 29 of Reg. XVII. of 1827, though the summons issued was duly served upon the accused,” was not illegal.

THIS case was referred for the orders of the Court by J. Elphinston, Acting Magistrate of the District of Cánará, under Sec. 434 of the Code of Criminal Procedure.

The accused was convicted by the Subordinate Magistrate of the Second Class at A'nkola, under Sec. 174 of the Indian Penal Code, of having intentionally omitted to attend the Mahalkari’s *Katcheri* to give evidence in a revenue case, under Secs. 26 and 29 of Reg. XVII. of 1827, though the summons issued for his appearance was duly served on and signed by him. The Acting Magistrate of the District, however, was of opinion that the said Regulation did not authorise the issue of summons for the attendance of witnesses to be examined under its provisions, and that, therefore, the accused was not liable, under Sec. 174 of the Indian Penal Code.

PER CURIAM (NEWTON, Acting C.J., and TUCKER, J.) :—
The Court does not consider the conviction illegal, and will not, therefore, interfere.